

ORIGINAL

OFFICIAL FILE  
ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

ILLINOIS  
COMMERCE COMMISSION

2005 NOV -7 A 11: 08 *JMS*

Jesse J. McNabb

vs.

The Peoples Gas Light and Coke Company

Complaint as to bill/charges  
in Chicago, Illinois

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CHIEF CLERK'S OFFICE

Docket No. 04-0544  
(Reopened)

**RESPONDENT'S MOTION FOR INVOLUNTARY DISMISSAL  
OF COMPLAINT AND PETITION FOR REHEARING**

Now comes the Respondent, The Peoples Gas Light and Coke Company ("Peoples Gas"), by and through its attorney, Mark Goldstein and respectfully, pursuant to Section 10-113 of the Illinois Public Utilities Act, 220 ILCS § 5/10-113, moves for the involuntary dismissal of the above-captioned Complaint and Petition for Rehearing.

In support of this Motion, the following is stated and a copy of the transcript from October 18, 2005 emergency hearing is submitted as Exhibit 1 and the case of Liberty Trucking Co. v. Illinois Commerce Comm'n. ("Liberty Trucking"), 81 Ill. App.3d 466, 401 N.E. 2d. 581 (1980) is submitted as Exhibit 2.

A. Statement of Facts

On August 26, 2004, the Complaint was filed before the Illinois Commerce Commission ("Commission"). On February 1, 2005, a proposed Order was entered. On April 6, 2005, a final Order was entered that would deny the Complaint. On May 6, 2005, the Complainant filed a Petition for Rehearing. On May 24, 2005, the Commission granted the rehearing. On September 8, 2005, the presiding ALJ set the

rehearing date for November 17, 2005. On October 18, 2005, the ALJ held an emergency hearing and made certain rulings. (See Ex. 1).

B. Pursuant to 220 ILCS § 5/10-113 the Illinois Commerce Commission Lost Jurisdiction over the Complaint and Petition For Rehearing On October 21, 2005.

1. This Commission lost jurisdiction of the Complaint and Petition for Rehearing after the expiration of the 150-day period on October 21, 2005, and any further action on this cause, now lies with the Illinois Appellate Court that has jurisdiction of the case. See, 220 ILCS § 10-201(a).<sup>1</sup>

2. Section 10-113 provides, in relevant part, as follows:

"In case the application for rehearing is granted in whole or in part the Commission shall proceed as promptly as possible to consider such rehearing as allowed...

Or [the Commission] shall fail to enter a final order upon the rehearing within 150 days after such rehearing is granted, the application for rehearing shall be deemed to have been denied and finally disposed of, and an order to that effect shall be deemed to have been served, for the purpose of an appeal from the...order or decision covered by such application." 220 ILCS 5/10-113 (prev. Ill. Rev. Stat., ch 111 2/3, para. 10-113) (Emphasis added)

3. The Commission is without authority to enter an order on rehearing after a petition is considered denied by operation of law for more than 150 days after a rehearing has been granted. See: Liberty Trucking. In Liberty Trucking, the Commission failed to enter a final decision on the merits of the petition within 150 days after rehearing was granted pursuant to Ill. Rev. Stat. ch. 111 2/3, para. 71 (1977), so the rehearing petition was considered denied and finally disposed of by law. Id. at 470, 401 N.E.2d at 584 (1980).

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<sup>1</sup>Complainant has not lost all rights for further review; beginning on October 21, 2005, when this Commission effectively lost jurisdiction over this matter, Complainant had 35 days to file an appeal to the Illinois Appellate Court, pursuant to 220 ILCS § 10-201(a).

4. The procedures outlined in this section [10-113] are part of an orderly plan set up by the legislature for judicial review of ICC rulings. Id. at 470, 401 N.E.2d at 583 (1980).

5. Notwithstanding the above good law, the presiding ALJ held an emergency hearing on October 18, 2005 and attempted to find a waiver of this statutory requirement. Three days before the expiration of the 150-day period, Respondent's counsel appeared at the October 18, 2005 emergency hearing scheduled by the ALJ and received the ALJ's oral, predetermined finding that a constructive or implied waiver had occurred on an unknown previous date. (See, Ex.1, Tr 25, 26)

6. Respondent objects to the ALJ's interpretation of its conduct at the emergency hearing or at any time before, as a waiver and further states that where statutory requirements are not followed as to notice, hearing, the presentation of evidence and finding of fact, the Commission loses its jurisdiction to act and any order entered by the Commission under such circumstances is void. Commonwealth Edison Co. v. Illinois Commerce Comm'n, 180 Ill. App. 3d 899, 536 N.E.2d 724 (1988).

7. Although the ALJ's oral ruling cited to Liberty Trucking, the case was not followed. Therefore, the resulting October 18, 2005 ruling that would extend the 150-day period is void. Id. at 899, 401 N.E.2d at 731 (1980).

8. On October 18, 2005, the ALJ read certain cases into the record and held that the parties had implicitly waived Section 10-113 by previously agreeing to a rehearing date outside of the five-month period. (Tr. 25) In support of her ruling, the ALJ relied upon Home Insurance Company v. Cincinnati Insurance Company, 213 Ill.

2d 307, 821 N.E.2d 269 (2004); and Liberty Mutual Insurance Company v. Westfield Insurance Company, 301 Ill. App. 3d 49, 703 N.E.2d 439 (1988). Both cases, however, are inapposite to the current case. The legal authorities cited by the ALJ apply to insurance companies and the "rights" being waived therein were not statutory rights. Therefore, the cases are inapplicable to 150-day statutory requirement under the Illinois Public Utilities Act.

9. In the instant Complaint case, neither Complainant nor Respondent are insurance companies and the rights being allegedly waived are not industry practice subrogation claims, as they were in Home Insurance Company, rather they are statutorily guaranteed rights, enacted by the legislature for the express purpose of ensuring that processes move quickly and efficiently through the Commission. See: Liberty Trucking.

10. Finally, with respect to the finding of waiver by conduct, Respondent objects to this finding as the record shows no evidence that Respondent's Counsel made an express waiver of the 150 day rule, nor was there constructive or implied waiver at any time. (See, TR at 26). The only time that the issue, Section 10-113, was discussed, on the record, was at the emergency hearing held on October 18, 2005, at which time there was no waiver. There is nothing in the record to show that Respondent waived the 150-day Rule on September 8, 2005 or October 18, 2005.

C. Conclusion


In conclusion, it is clear from the mandatory language that Section 10-113 operates as a limitation on the power of the Illinois Commerce Commission and that rehearings may only be conducted within this statutory framework. See, Liberty Trucking Co. v. Illinois Commerce Comm'n, 81 Ill. App. 3d 466, 401 N.E.2d 581 (1980). Despite the ALJ's ruling, Section 10-113 of the Illinois Public Utilities Act does not allow for parties to "waive" this statutory requirement or for the Commission to find that "implicit waivers" have occurred.

WHEREFORE, Respondent, The Peoples Gas Light and Coke Company, respectfully requests the Illinois Commerce Commission to enter an order providing the following relief:

1. Dismiss this Complaint with prejudice pursuant to 220 ILCS § 5/10-113 based upon a lack of jurisdiction.
2. Grant Respondent other relief deemed adequate and just

Respectfully submitted,

THE PEOPLES GAS LIGHT AND COKE  
COMPANY

By:   
One of the Attorneys for  
The Peoples Gas Light and Coke Company

Mark L. Goldstein  
108 Wilmot Road, Suite 330  
Deerfield, Illinois 60015  
(847) 580-5480

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

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COMMERCE COMMISSION

2005 NOV -7 A 11:08 JWS

CHIEF CLERK'S OFFICE

Jesse J. McNabb

-vs-

The Peoples Gas Light and Coke  
Company,

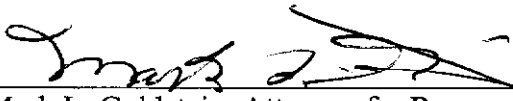
Complaint as to overcharged bill--based  
upon meter reading that was clearly  
overstated in Chicago, Illinois.

04-0544

NOTICE OF FILING

TO: Parties on Certificate of Service

PLEASE TAKE NOTICE that on November 5, 2005, I filed with the Chief Clerk of the Illinois Commerce Commission the Respondent's Motion for Involuntary Dismissal of Complaint and Petition for Rehearing, attached hereto, copies of which are hereby served upon you.

  
Mark L. Goldstein, Attorney for Respondent  
108 Wilmot Road, Suite 330  
Deerfield, IL 60015  
(847) 580-5480

**CERTIFICATE OF SERVICE**

I hereby certify that on November 5, 2005, I served a copy of the attached Respondent's Motion for Involuntary Dismissal of Complaint and Petition for Rehearing by causing a copy thereof to be placed in the U.S. Mail, first class postage affixed, addressed to each of the parties indicated below:

Ms. Elizabeth A. Rolando  
Chief Clerk  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701

Mr. Juan B. Ooink  
Law Office of Steven M. Goldman  
18 W. Dundee Rd.  
Wheeling, IL 60690

Ms. Claudia Sainsot  
Administrative Law Judge  
Illinois Commerce Commission  
160 N. LaSalle St., Ste. C-800  
Chicago, IL 60601

  
Mark L. Goldstein